

RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

APR 20 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Streamlining the Commission's)
Antenna Structure Clearance)
Procedure)
)
and)
)
Revision of Part 17 of the)
Commission's Rules Concerning)
Construction, Marking, and)
Lighting of Antenna Structures)

WT Docket No. 95-5

DOCKET FILE COPY ORIGINAL

To: The Commission

REPLY COMMENTS
OF THE
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

The Personal Communications Industry Association
("PCIA")/¹, by its attorneys, in response to the *Notice of
Proposed Rule Making ("NPRM")*, FCC 95-16 (released January 20,

¹ PCIA is an international trade association created to represent the interests of both commercial mobile radio service (CMRS) and private mobile radio service (PMRS) users and businesses involved in all facets of the personal communications industry. PCIA's federation of councils include: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association ("SOMA"), the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, PCIA is the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, 800 MHz General Category frequencies for Business eligibles and conventional SMR systems, and for the 929 MHz paging frequencies.

249

1995), herewith submits its Reply Comments in the above-referenced proceeding.

I. Background

On March 21, 1995, PCIA submitted Comments in this proceeding in general support of the Commission's goals of streamlining the antenna clearance process and holding structure owners primarily responsible for compliance with the Part 17 Rules for the marking and lighting of antenna towers. By way of brief summary, PCIA supports the Commission's proposal to require a single entity -- the antenna structure owner -- to become primarily responsible for painting and lighting the tower. However, the scope of this proceeding must be restricted to the proposed registration -- and not licensing -- of antenna structures. If a registration process is implemented, the Commission must do nothing more than to accept the registration information that a party submits. If the Commission requires additional or clarifying information, it must do so without rejecting the registrant's previous submission, and without the imposition of any penalty.

The value of the Commission's proposed antenna structure database must be balanced with the burdens that might ensue from the registration process. PCIA encourages the Commission to adopt an FCC Form 854-R that is easy for the registrant to understand and complete, and requires only the most pertinent information about the antenna structure and the registrant. Finally, PCIA believes that participants in the registration process should not be charged fees.

II. With Few Exceptions There Is Strong Support For The Commission's Proposal

PCIA's review of the Comments filed in this proceeding indicate that the Commission's proposals are generally supported by a wide 4 to 1 margin. Three noteworthy topics warrant further Commission review and consideration: forms, registration fees and amnesty.

A. Forms

The Utilities Telecommunications Council ("UTC") recommends that, to further streamline the registration process, FCC Form 854 should be replaced by FAA Form 7460-1.²

If the federal government truly wants to streamline its regulatory process *vis-a-vis* structure owners, a prudent place to begin is with the underlying government application forms. Such efforts would truly be consistent with *The Paperwork Reduction Act of 1980, P.L. 96-511 (December 11, 1980), 44 U.S.C. 3507*. PCIA encourages the Commission to further explore the possibility of combining the requirements of FCC Form 854 with Form 7460-1.

² UTC correctly points out that much of the information required on FCC Form 854 is already required on FAA Form 7460-1. There is much merit to UTC's idea but PCIA appreciates the significant administrative complications presented by the need to coordinate such an effort. PCIA has initiated discussions with the FAA on a number of site issues and the FAA, FCC, PCIA and CTIA have agreed to form a working group to establish and maintain a dialogue on issues related to tower siting. This group may be able to explore such joint efforts as suggested by UTC.

B. Registration Fees

Although many of the commenters seem resigned to paying a regulatory fee for structure registration,³ PCIA believes that the FCC has not justified the implementation of registration fees.⁴ The National Association of Broadcasters ("NAB") succinctly reviews the long-term administrative cost savings that the registration process will bring the Commission, thus supporting the notion that no new fees should accompany the new registration process. See, NAB Comments at page 3.

C. The FCC Should Establish A "Safe Harbor" Filing Period

Both Motorola and the Cellular Telecommunications Industry Association ("CTIA") point out that during the structure registration process, it is likely that corrected site data will be submitted on numerous occasions. While the

³ For example, "Motorola recognizes the likely inevitability of some form of registration fee." See, Motorola Comments at page 11.

⁴ The FAA does not charge fees for the filing of FAA Form 7460-1 "Notice of Proposed Construction or Alteration," which is the prerequisite to obtaining an FAA Determination of No Air Hazard. When the Commission initiated its Fee Collection Program, the Congressional mandate was for the Commission to recoup, via the regulatory fees, the expenses it incurs in processing applications and regulating Commission permittees and licensees. See generally, *Fees II*, 5 FCC Rcd. 3558 (1990). Since the proposed antenna structure registration process will not require the Commission's staff to process and/or grant any kind of application, or subject the Commission to the filing of any pleadings or petitions, the regulatory expenses to oversee the registration process should be minimal.

Commission strives to establish as complete and correct a data base as possible, registrants must not be afraid to advise the Commission of any errors in previously submitted data. Motorola and CTIA urge the Commission to adopt a "safe harbor" or "amnesty" program whereby incumbent licensees and permittees would be protected from any forfeitures or admonishments for correcting previously submitted data./⁵ PCIA supports such a "safe harbor" program. It is certainly within the public interest for the Commission to establish a friendly environment for the collection of the data necessary to establish an accurate and complete database.

III. Secondary Responsibility Should Only Be Temporary

A majority of the commenters in this proceeding, including PCIA, support the Commission's proposal to make the antenna structure owner primarily responsible for registration, maintenance, notification and structure dismantling matters./⁶ Secondary responsibility should only be an available option until such time as the Commission can determine with reasonable certainty who owns and controls each structure. Once the Commission establishes its new structure data base, secondary responsibility should not be placed upon any of the tenant licensees or permittees for maintenance,

⁵ See, Motorola Comments at pages 16-17; CTIA Comments at pages 5-6.

⁶ See, e.g., Comments filed by Paging Network, Inc., Onecomm Corporation, American Petroleum Institute, Capital Cities / ABC, Inc., Nationwide Communications, Inc., and Sprint Corporation.

painting or lighting compliance because the Commission will have the information available to determine who owns each structure.

Conclusion

PCIA continues to support the Commission's proposal to streamline the Commission's antenna structure clearance procedures and revision of Part 17 of the Commission's Rules.

Respectfully submitted,

**PERSONAL COMMUNICATIONS INDUSTRY
ASSOCIATION**

By:



David E. Weisman
Cary S. Tepper

Its Counsel

Meyer, Faller, Weisman & Rosenberg, P.C.
4400 Jenifer Street, N.W.
Suite 380
Washington, D.C. 20554

(202) 362-1100

April 20, 1995